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GRAPH FOUNDATION, INC.  
6

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION  
10

11 NEO4J, INC., a Delaware corporation, and  
NEO4J SWEDEN AB, a Swedish corporation

12 Plaintiffs,  
13

14 vs.

15 GRAPH FOUNDATION, INC., an Ohio  
corporation, GRAPHGRID, INC., and  
16 ATOMRAIN, INC., a Nevada corporation  
17

Case No.: 5:19-cv-06226-EJD

**DEFENDANT GRAPH FOUNDATION,  
INC.'S ANSWER TO AMENDED  
COMPLAINT**

1 Now comes the defendant Graph Foundation, Inc. (“Graph Foundation” or “Defendant”)  
2 and in response to the allegations set forth in the Amended Complaint of Plaintiffs Neo4J, Inc.  
3 (“Neo4J”) and Neo4J Sweden AB (“Neo4J Sweden” and with Neo4J, “Plaintiffs”, answers as  
4 follows:

5 1. Defendant admits that the statement outlines the claims but otherwise denies the  
6 claims and the allegations in paragraph 1.

7 2. Defendant admits, on information and belief, the first and second sentence in  
8 paragraph 2. Defendant denies that Plaintiff is the graph company behind an open source software  
9 product called Neo4j as the software is owned by and licensed by Neo4j Sweden AB according to  
10 the license for Neo4j-enterprise available at GitHub. Defendant lacks knowledge or information  
11 sufficient to form a belief as to the truth of the remaining allegations of paragraph 2 and on that  
12 basis denies the remaining allegations.

13 3. Defendant is without sufficient information to form a belief as to the truth of the  
14 allegations of paragraph 3 and, on that basis, denies the allegations.

15 4. Defendant is without sufficient information to form a belief as to the truth of the  
16 allegations of paragraph 4 and, on that basis, denies the allegations.

17 5. Defendant denies that it “competes” with Plaintiff’s graph platform. Defendant  
18 admits the remaining allegations of paragraph 5.

19 6. Defendant denies that it was conceived of or formed by John Mark Suhy.  
20 Defendant admits the remaining allegations of paragraph 6.

21 7. Defendant admits the allegations of paragraph 7.

22 8. Defendant denies that GraphGrid competes with Neo4J USA. Defendant is lacks  
23 knowledge or information sufficient to form a belief as to the truth of the allegation that  
24 GraphGrid competes with Solution Partners and, on that basis, denies the allegation. Defendant  
25 admits that GraphGrid offers products and services for users of ONgDB and admits that  
26 GraphGrid’s GraphGrid Connected Data Platform is a Platform-as-a-Service offering that can be  
27 used with ONgDB. Defendant denies on information and belief that the GraphGrid Connected  
28 Data Platform is “built around GFI’s ONgDB.” Defendant denies, on information and belief, that

1 GraphGrid openly promotes ONgDB over “official Neo4j(r) graph program software to actual and  
2 potential customers.” Defendant denies, on information and belief, that Exhibit 5 is a copy of a  
3 page of GraphGrid’s website. Defendant admits, on information and belief, that Exhibit 6 is a  
4 copy of a page from GraphGrid’s and that the document speaks for itself. Defendant denies the  
5 remaining allegations of paragraph 8.

6 9. Defendant admits the allegations of paragraph 9.

7 10. Defendant denies, on information and belief, that AtomRain LLC operated as a  
8 holding company for GraphGrid. Defendant denies, on information and belief, that AtomRain  
9 LLC is a shell entity maintained by the Nussbaums. Defendant admits the remaining allegations  
10 of paragraph 10.

11 11. Defendant denies that AtomRain, Inc. competes with Neo4J USA. Defendant  
12 lacks knowledge or information sufficient to form a belief as to the truth of the allegation that  
13 AtomRain, Inc. competes with Solution Partners and, on that basis, denies the allegation.  
14 Defendant admits, on information and belief, the remaining allegations of paragraph 11.

15 12. Defendant admits the allegations of paragraph 12.

16 13. Defendant admits on information and belief that Exhibits 10 and 11 are printouts  
17 from AtomRain’s website and that the printouts speak for themselves. Defendant admits, on  
18 information and belief, that AtomRain is an authorized Neo4j(r) graph database platform software  
19 Solution Partner. Defendant denies on information and belief the remaining allegations of  
20 paragraph 13.

21 14. Defendant admits, on information and belief, that Exhibits 12 and 13 are copies of  
22 LinkedIn pages for Bradley Nussbaum and Benjamin Nussbaum and that the documents speak for  
23 themselves. Defendant denies the remaining allegations of paragraph 14.

24 15. Defendant denies the allegations of paragraph 15.

25 16. Defendant denies the allegations of paragraph 16.

26 17. Defendant denies the allegations of paragraph 17.

27 18. Defendant denies the allegations of paragraph 18.

28 19. Defendant denies the allegations of paragraph 19.

1           20. Defendant denies the allegations of paragraph 20.

2           21. Defendant denies the allegations of paragraph 21.

3           22. Defendant admits the allegations of paragraph 22.

4           23. Defendant denies the allegations of paragraph 23.

5           24. Defendant denies the allegations of paragraph 24.

6           25. Defendant admits the allegations of paragraph 25.

7           26. Defendant denies, on information and belief, the allegations of paragraph 26.

8           27. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
9 of the allegations of paragraph 27 and, on that basis, denies the allegations.

10          28. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
11 of the allegations of paragraph 28 and, on that basis, denies the allegations.

12          29. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
13 of the allegations of paragraph 29 and, on that basis, denies the allegations.

14          30. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
15 of the allegations of paragraph 30 and, on that basis, denies the allegations.

16          31. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
17 of the allegations of paragraph 31 and, on that basis, denies the allegations.

18          32. Defendant denies that the AGPLv3 + Common Cause license is valid. Defendant  
19 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
20 allegations of paragraph 32 and, on that basis, denies the allegations.

21          33. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
22 of the allegations of paragraph 33 and, on that basis, denies the allegations.

23          34. Paragraph 34 states a legal conclusion and, therefore, requires no response. To the  
24 extent Paragraph 34 requires a response, Defendant lacks knowledge or information sufficient to  
25 form a belief as to the truth of the allegations of paragraph 34 and, on that basis, denies the  
26 allegations.

27          35. In response to paragraph 35, Defendant admits that it was formed on June 21, 2018.  
28 Defendant states that the statements on its website speaks for itself. Defendant denies the

1 remaining allegations of paragraph 35.

2 36. In response to paragraph 36, Defendant states that the language on its website  
3 speaks for itself. Defendant admits that it offers ONgDB graph database software. Defendant  
4 denies the remaining allegations of paragraph 36.

5 37. In response to paragraph 37, Defendant states that the language on its website  
6 speaks for itself. Defendant denies the remaining allegations of paragraph 37.

7 38. In response to paragraph 38, Defendant states that the language on its website  
8 speaks for itself. Defendant denies the remaining allegations of paragraph 38.

9 39. In response to paragraph 39, Defendant lacks knowledge or information sufficient  
10 to form a belief as to the authenticity of Exhibits 19 and 20 and on that basis, Defendant denies the  
11 allegations as to those exhibits, which speak for themselves. Defendant denies the remaining  
12 allegations of paragraph 39.

13 40. Defendant admits that it does not have a written contract granting it a trademark  
14 license from Plaintiff but denies that one is required. Defendant denies the remaining allegations  
15 of paragraph 40.

16 41. In response to paragraph 41, Defendant states that the language on its website and  
17 in its source code repository speaks for itself. Defendant denies the remaining allegations of  
18 paragraph 41.

19 42. In response to paragraph 42, Defendant states that the language on the webpage for  
20 the [www.github.com](http://www.github.com) ONgDB source code repository speaks for itself. Defendant denies the  
21 remaining allegations of paragraph 42.

22 43. Defendant admits that the ONgDB software includes source code authored by  
23 Defendant and John Mark Suhy. Defendant denies the remaining allegations of paragraph 43.

24 44. Defendant denies the allegations of paragraph 44.

25 45. In response to paragraph 45, Defendant lacks knowledge or information sufficient  
26 to form a belief as to the truth of the allegations of paragraph 45 and, on that basis, Defendant  
27 denies the allegations of paragraph 45.

28 46. In response to paragraph 46, Defendant states that the language of its website

1 speaks for itself. Defendant denies the remaining allegations of paragraph 46.

2 47. In response to paragraph 47, Defendant states that the pages of the ONgDB GitHub  
3 repository speak for themselves. Defendant denies the remaining allegations of paragraph 47.

4 48. In response to paragraph 48, Defendant lacks knowledge or information sufficient  
5 to form a belief as to the truth of the allegations of paragraph 48 relating to Plaintiffs' licenses,  
6 attribution files, and Github repository page and, on that basis, Defendant denies those allegations.  
7 Defendant states that the pages of the ONgDB GitHub repository speak for themselves.  
8 Defendant denies the remaining allegations of paragraph 48.

9 49. In response to paragraph 49, Defendant states that the pages of the ONgDB GitHub  
10 repository speak for themselves. Defendant denies the remaining allegations of paragraph 49.

11 50. Defendant denies the allegations of paragraph 50.

12 51. In response to paragraph 51, Defendant states that the language used on the pages  
13 of the ONgDB GitHub repository page speaks for itself. Defendant denies the remaining  
14 allegations of paragraph 51.

15 52. In response to paragraph 52, Defendant states that the language used on the pages  
16 of the ONgDB GitHub repository speaks for itself. Defendant denies the remaining allegations of  
17 paragraph 52.

18 53. In response to paragraph 53, Defendant states that the language used on the pages  
19 of the ONgDB GitHub repository speaks for itself. Defendant denies the allegations of paragraph  
20 53.

21 54. In response to paragraph 54, Defendant states that the language used on the pages  
22 of the ONgDB GitHub repository speaks for itself. Defendant denies the allegations of paragraph  
23 54.

24 55. In response to paragraph 55, Defendant states that the language used on the pages  
25 of the ONgDB GitHub repository speaks for itself. Defendant denies the allegations of paragraph  
26 55.

27 56. Paragraph 56 states a legal conclusion and, therefore, requires no response. To the  
28 extent Paragraph 56 requires a response, Defendant lacks knowledge or information sufficient to

1 form a belief as to the truth of the allegations of paragraph 56 and, on that basis, denies the  
2 allegations.

3 57. Defendant denies the allegations of paragraph 57.

4 58. With respect to Neo4j USA's Trademark Guidelines, the allegations of Paragraph  
5 58 are based on legal conclusions and assertions and, therefore, require no response. To the  
6 extend a response is required, Defendant denies the allegations of Paragraph 58 with respect to the  
7 Trademark Guidelines and denies that the Trademark Guidelines place any requirements on  
8 Defendant. Defendant states that the pages of its website and the ONgDB GitHub repository  
9 speak for themselves. Defendant denies the remaining allegations of paragraph 58.

10 59. Defendant denies the allegations of paragraph 59.

11 60. In response to paragraph 60, Defendant states that the statements on its website  
12 speak for themselves. Defendant denies the remaining allegations of paragraph 60.

13 61. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
14 of the allegations of paragraph 61 and, on that basis, denies the allegations.

15 62. In response to paragraph 62, Defendant states that the statements on its Twitter feed  
16 speak for themselves. Defendant denies the remaining allegations of paragraph 62.

17 63. In response to paragraph 63, Defendant states that the statements on its Twitter feed  
18 speak for themselves. Defendant denies the remaining allegations of paragraph 63.

19 64. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
20 of the allegations of paragraph 64 and, on that basis, denies the allegations.

21 65. Defendant denies the allegations of paragraph 65.

22 66. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
23 of the allegations of paragraph 66 and, on that basis, denies the allegations.

24 67. Defendant denies the allegations of paragraph 67.

25 68. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
26 of the allegations of paragraph 68 or of the accuracy of Exhibit 36 and, on that basis, denies the  
27 allegations.

28 69. In response to paragraph 69, Defendant states that the software files of ONgDB and

1 the pages of the ONgDB GitHub repository speak for themselves. Defendant denies the remaining  
2 allegations of paragraph 69.

3 70. In response to paragraph 70, Defendant admits on information and belief that there  
4 have been more than 10,000 downloads of ONgDB software from the ONgDB GitHub repository.  
5 Defendant denies the remaining allegations of paragraph 70.

6 71. In response to paragraph 71, Defendant states that the statements on its Twitter feed  
7 speak for themselves. Defendant admits that ONgDB is an open source fork of Neo4J Enterprise.  
8 Defendant denies the remaining allegations of paragraph 71.

9 72. In response to paragraph 72, Defendant states that the statements on its Twitter  
10 feed, website and the ONgDB GitHub repository speak for themselves. Defendant denies the  
11 remaining allegations of paragraph 72.

12 73. In response to paragraph 73, Defendant state that its statements to users or potential  
13 users of ONgDB speak for themselves. Defendant denies the remaining allegations of paragraph  
14 73.

15 74. Defendant denies the allegations of paragraph 74.

16 75. In response to paragraph 75, Defendant states that the language on the Neo4J  
17 GitHub repository speaks for itself. Defendant denies the remaining allegations of paragraph 75.

18 76. In response to paragraph 76, Defendant states that the statements on its Twitter  
19 feed, website, and the ONgDB GitHub repository speak for themselves. Defendant denies the  
20 remaining allegations of paragraph 76 with respect to statements on its Twitter feed, website, and  
21 the ONgDB GitHub repository. Defendant lacks knowledge or information sufficient to form a  
22 belief as to the truth of the remaining allegations of paragraph 76 and, on that basis, denies the  
23 allegations.

24 77. Defendant denies the allegations of paragraph 77.

25 78. Defendant incorporates its responses to paragraphs 1-77 above as though fully set  
26 forth herein.

27 79. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
28 of the allegations of paragraph 79 and, on that basis, denies the allegations.



1           80. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
2 of the allegations of paragraph 80 and, on that basis, denies the allegations.

3           81. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
4 of the allegations of paragraph 81 and, on that basis, denies the allegations.

5           82. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
6 of the allegations of paragraph 82 and, on that basis, denies the allegations.

7           83. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
8 of the allegations of paragraph 83 and, on that basis, denies the allegations.

9           84. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
10 of the allegations of paragraph 84 and, on that basis, denies the allegations.

11           85. Defendant denies the allegations of paragraph 85.

12           86. Defendant denies the allegations of paragraph 86.

13           87. Defendant denies the allegations of paragraph 87.

14           88. Defendant denies the allegations of paragraph 88.

15           89. Defendant denies the allegations of paragraph 89.

16           90. Defendant denies the allegations of paragraph 90.

17           91. Defendant incorporates its responses to paragraphs 1 through 90 as though fully set  
18 forth herein.

19           92. Defendant denies the allegations of paragraph 92.

20           93. Defendant denies the allegations of paragraph 93.

21           94. Defendant denies the allegations of paragraph 94.

22           95. Defendant denies the allegations of paragraph 95.

23           96. Defendant denies the allegations of paragraph 96.

24           97. Defendant denies the allegations of paragraph 97.

25           98. Defendant denies the allegations of paragraph 98.

26           99. Defendant incorporates its responses to paragraphs 1 through 99 as though fully set  
27 forth herein.

28           100. Defendant denies the allegations of paragraph 100.

1           101. Defendant denies the allegations of paragraph 101.

2           102. Defendant denies the allegations of paragraph 102.

3           103. Defendant denies the allegations of paragraph 103.

4           104. Defendant denies the allegations of paragraph 104.

5           105. Defendant denies the allegations of paragraph 105.

6           106. Defendant incorporates its responses to paragraphs 1 through 105 as though fully  
7 set forth herein.

8           107. Defendant denies the allegations of paragraph 107.

9           108. Defendant denies the allegations of paragraph 108.

10          109. Defendant denies the allegations of paragraph 109.

11          110. Defendant denies the allegations of paragraph 110.

12          111. Defendant denies the allegations of paragraph 111.

13          112. Defendant incorporates its responses to paragraphs 1-111 as though fully set forth  
14 herein.

15          113. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
16 of the allegations of paragraph 113 and, on that basis, denies the allegations.

17          114. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
18 of the allegations of paragraph 114 and, on that basis, denies the allegations.

19          115. Defendant denies the allegations of paragraph 115.

20          116. Defendant denies the allegations of paragraph 116.

21          117. Defendant denies the allegations of paragraph 117.

22          118. Defendant incorporates its responses to paragraph 1-117 as though fully set forth  
23 herein.

24          119. Defendant denies the allegations of paragraph 119.

25          120. In response to paragraph 120, Defendant states that the referenced license speaks  
26 for itself and is subject to its terms. Defendant states the remaining allegations of paragraph 120  
27 state legal conclusions to which no response is required. To the extent a response is required,  
28 Defendant denies the allegations of paragraph 120 to the extent they go beyond the terms of the

1 referenced license.

2 121. In response to paragraph 121, Defendant states that the referenced license speaks  
3 for itself and is subject to its terms. Defendant denies the remaining allegations of paragraph 121.

4 122. Defendant admits that ONgDB contains source code files that are subject to Neo4J  
5 Sweden's copyright. Defendant states that the referenced license speaks for itself and is subject to  
6 its terms. Defendant denies the remaining allegations of paragraph 122.

7 123. Defendant denies the allegations of paragraph 123

8 124. In response to paragraph 124, Defendant states that the referenced license speaks  
9 for itself and is subject to its terms. Defendant denies the remaining allegations of paragraph 124.

10 125. Defendant denies the allegations of paragraph 125.

11 126. Defendant denies the allegations of paragraph 126.

12 127. Defendant denies the allegations of paragraph 127.

13 128. Defendant denies the allegations of paragraph 128.

14 129. Defendant incorporates its responses to paragraphs 1-128 above as though fully set  
15 forth herein.

16 130. In response to paragraph 130, Defendant states that the Seventh Cause of Action  
17 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
18 Defendant denies the allegations of paragraph 130.

19 131. In response to paragraph 131, Defendant states that the Seventh Cause of Action  
20 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
21 Defendant denies the allegations of paragraph 131.

22 132. In response to paragraph 132, Defendant states that the Seventh Cause of Action  
23 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
24 Defendant denies the allegations of paragraph 132.

25 133. In response to paragraph 133, Defendant states that the Seventh Cause of Action  
26 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
27 Defendant denies the allegations of paragraph 133.

28 134. In response to paragraph 134, Defendant states that the Seventh Cause of Action

1 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
2 Defendant denies the allegations of paragraph 134.

3 135. In response to paragraph 135, Defendant states that the Seventh Cause of Action  
4 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
5 Defendant denies the allegations of paragraph 135.

6 136. In response to paragraph 136, Defendant states that the Seventh Cause of Action  
7 has been dismissed, with prejudice and, therefore, no response is required, and, on that basis,  
8 Defendant denies the allegations of paragraph 136.

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to state a claim)

12 1. The Complaint, and each cause of action therein, fails to state a claim against  
13 Defendant.

14 **SECOND AFFIRMATIVE DEFENSE**

15 (Unclean Hands)

16 2. Plaintiffs are barred from obtaining relief under any of their claims because of their  
17 own unclean hands. Plaintiffs are attempting to improperly use a dual licensing practice having a  
18 commercial version controlled by Plaintiffs and an open source software licensed under a General  
19 Public License. Because the open source software is under a GPL or AGPL license, and has over  
20 100 contributors, Plaintiffs may not be able to actually convert the GPL or AGPL license to  
21 proprietary software. Under a GPL or AGPL type license, contributors' efforts to modify the  
22 software cannot be taken away and turned into privately controlled software. Defendant is  
23 informed and believe that Plaintiffs only provide an object code version of the Neo4J software  
24 under a commercial license while the GPL and AGPL type license requires access to the source  
25 code as well. Defendant is informed and believe that because Plaintiffs cannot lawfully operate a  
26 dual license model since the open source is based on GPL or AGPL, Plaintiffs resort to sharp and  
27 false practices with customers (lying about the difference between the commercial versions and  
28 the open source version) attempting to restrict partners from supporting the open source Neo4J

1 version with unlawful restrictions and interfering in attempts to use open source Neo4J software.

2 The rights of open source users to use the software is shown by the FAQs at the GNU site:

3  
4 If I only make copies of a GPL-covered program and run them, without distributing or  
5 conveying them to others, what does the license require of  
me?(#NoDistributionRequirements)

6 Nothing. The GPL does not place any conditions on this activity.

7 The same rules apply to modified versions of the open source code:

8 Does the GPL require that source code of modified versions be posted to the public?  
9 (#GPLRequireSourcePostedPublic)

10 The GPL does not require you to release your modified version, or any part of it. **You are**  
11 **free to make modifications and use them privately, without ever releasing them. This**  
12 **applies to organizations (including companies), too; an organization can make a**  
13 **modified version and use it internally without ever releasing it outside the**  
14 **organization.**

15 But *if* you release the modified version to the public in some way, the GPL requires you to  
16 make the modified source code available to the program's users, under the GPL.  
Thus, the GPL gives permission to release the modified program in certain ways, and not  
in other ways; but the decision of whether to release it is up to you.  
[Emphasis added]

17 As Plaintiffs have sought to threaten open source users improperly, they come to this court  
18 with unclean hands, they should be barred from recovery.

### 19 **THIRD AFFIRMATIVE DEFENSE**

20 (Fair Use of Trademarks)

21 3. Defendant's use of the trademarks was and is a nominative fair use to 1) identify a  
22 software product called Neo4j that is freely available as open source software and 2) comparative  
23 advertising (See 16 C.F.R. §14.15(b)).

### 24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Right to fork and use Neo4J Open Source under GitHub Terms of Service)

26 4. By using a public repository at GitHub, the open source versions of Neo4J are  
27 subject to the GitHub Terms of Service which allow any user to use and fork the software:  
28

D. 5. If you set your pages and repositories to be viewed publicly, you grant each User of GitHub a nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality (for example, through forking). You may grant further rights if you adopt a license. If you are uploading Content you did not create or own, you are responsible for ensuring that the Content you upload is licensed under terms that grant these permissions to other GitHub Users.

<https://help.github.com/en/articles/github-terms-of-service>

Plaintiff's Complaint is vague and ambiguous as to whether it is alleging that Defendant's forking and use of Neo4J Open Source is a violation of the Lanham Act or an Unfair Trade Practice. To the extent Plaintiff is so alleging, that claim is barred by the GitHub Terms of Service which expressly allow for such forking and use.

#### **FIFTH AFFIRMATIVE DEFENSE**

(The Addition of the Commons Clause is a Breach of the AGPL)

5. The open source license by Neo4J Sweden AB, the AGPL, is a license copyrighted by the Free Software Foundation. The beginning of the AGPL provides a copyright notice.

Copyright (C) 2007 Free Software Foundation, Inc. <<http://fsf.org/>>

Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed.

By its terms, the license may not be changed.

Neo4J Sweden AB's attempt to change the AGPL license violates its terms. The licensee is protected from this violation under the terms of the license: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, **you may remove that term.**" [Emphasis added]. §7 AGPL.

Defendant had the express right to remove any improper terms and such removal prevented further infringement of the APGL license's terms.

#### **SIXTH AFFIRMATIVE DEFENSE**

(Good Faith Intent)

6. Plaintiffs' claims are barred because Defendant acted in good faith and without any intent to infringe or to aid infringement of Plaintiffs' work.

**PRAYER FOR RELIEF**

Wherefore, Defendant requests:

1. The Complaint be dismissed with prejudice;
2. That the first three trademark-based claims be found exceptions as the trademark was obtained through fraud, alleged infringements are obviously nominative fair use, allowing Defendant to recovery attorneys' fees under 15 U.S.C. §1117(a);
3. That Plaintiff take nothing by its Complaint;
4. That Defendant recover its costs, including attorneys' fees;
5. And for such other and further relief as the Court deems just.

Dated: November 30, 2020

BERGESON, LLP

By: /s/ John D. Pernick  
Attorneys for Defendant  
GRAPH FOUNDATION, INC.

**DEMAND FOR JURY TRIAL**

Defendant Graph Foundation, Inc. hereby demands a trial by jury.

Dated: November 30, 2020

BERGESON, LLP

By: /s/ John D. Pernick  
Attorneys for Defendant  
GRAPH FOUNDATION, INC.